

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT

JASON LYNN HOLLADY, #31114-039 0

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CASE NO.: 05-CV-40004-FL

CRIM. NO.: 03-CR-50046-FL

HON. PAUL V. GADOLA

MAG. JUDGE WALLACE CAPEL, JR.

ORDER GRANTING PETITIONER'S
MOTION TO APPEAR TELEPHONICALLY
AND
ORDER DENYING MOTION FOR RE-SENTENCING

This matter is before the Court on the Petitioner's "Motion To Appear Telephonically," filed on February 3, 2005, and Petitioner's "Motion For Re-Sentencing," filed on January 13, 2005.

In his motion to appear telephonically, the Petitioner states that the pending 28 U.S.C. § 2255 Motion may require a hearing before the Court. Petitioner further indicates that since his attorney is capable of addressing the issues in this case at any required hearing, he requests that he be permitted to participate telephonically. To the extent that a hearing on the 28 U.S.C. § 2255 Motion is necessary, the Petitioner may appear telephonically. The motion to appear telephonically is hereby **GRANTED**.

The Petitioner has also filed a motion for re-sentencing to term of incarceration below the guidelines based upon the Petitioner's statements made in court and also based upon the decision in United States vs. Booker, 534 U.S. ____ (2005), decided on January 12, 2005. The Government has filed a response to the motion. A review of the record in this matter indicates that the issue of

re-sentencing has already been raised in the Petitioner's 28 U.S.C. § 2255 Motion to Vacate Sentence. Therefore, since that issue is currently pending before the Court it will be addressed upon the Court's review of the motion to vacate sentence. Accordingly, the motion for re-sentencing is hereby **DENIED WITHOUT PREJUDICE**.

IT IS SO HEREBY ORDERED.

The parties are hereby informed that any objection to this order must be filed with the district court within 10 days after service, pursuant to Rule 72(a), Federal Rules of Civil Procedure.

DATED: January 17, 2006

s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on **January 17, 2006**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification of such filing to the following: Robert W. Haviland, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s): Jason Lynn Hollady, #31114-039, Federal Prison Camp - Duluth, P.O. Box 1000, Duluth, MN 55814-1000, Charles A. Grossmann, Esq., 702 Church St., Flint, MI 48502

s/James P. Peltier
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